



**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 16**

**[FAC 2021-06; FAR Case 2020-004; Item II; Docket No. FAR-2020-0004, Sequence No. 1]**

**RIN 9000-AO04**

**Federal Acquisition Regulation: Application of Micro-Purchase Threshold to Task and Delivery Orders**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2020 that raises the threshold for fair opportunity on certain task and delivery orders to the micro-purchase threshold.

**DATES:** *Effective:* **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 or [Michaelo.jackson@gsa.gov](mailto:Michaelo.jackson@gsa.gov) for clarification of content. For information pertaining to status or publication schedules,

contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2021-06 and FAR Case 2020-004.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

DoD, GSA, and NASA published a proposed rule at 85 FR 67327, on October 22, 2020, to implement section 826 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92), which increases the threshold for requiring fair opportunity on orders under multiple-award contracts from \$2,500 to the "micro-purchase threshold". The fair opportunity to be considered at FAR 16.505(b)(1) applies to orders over the threshold unless an exception at 16.505(b)(2) applies. The threshold at FAR 16.505 is currently \$3,500, as a result of inflation adjustments in accordance with FAR 1.109. The micro-purchase threshold (MPT) is \$10,000 (FAR case 2018-004 published on July 2, 2020, at 85 FR 40064).

### **II. Discussion and Analysis**

There were no public comments submitted in response to the proposed rule, and no changes were made to the final rule.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This final rule does not create any new provisions or clauses, nor does it change the applicability of any

existing provisions or clauses included in solicitations and contracts valued at or below the simplified acquisition threshold, or for commercial items, including commercially available off-the-shelf items.

#### **IV. Expected Impact of the Rule**

DoD, GSA, and NASA have performed an analysis for this final rule. This rule is expected to reduce the public burden because the threshold increase will reduce costs to submit an offer for the unsuccessful awardees who participate in fair opportunity competitions for orders under FAR part 16. DoD, GSA, and NASA recognize some awardees may be impacted by a reduction in the number of opportunities an awardee may have to receive an award of a delivery or task order through fair opportunity. Using Federal Procurement Data System (FPDS) data from FY 2017 through FY 2019, the average number of fair opportunity task or delivery orders under FAR part 16 procedures is approximately 9,800 orders annually. DoD, GSA, and NASA estimate that the Government receives an average of three offers for each of the 9,800 task or delivery orders, resulting in an estimated 19,600 ( $9,800 \times 2$ ) unsuccessful offers. There are costs to submit the estimated 19,600 unsuccessful offers, which will be eliminated by this rule.

DoD, GSA, and NASA recognize that the increase in the MPT in FAR Case 2018-004 has resulted in an increased use of the Governmentwide commercial purchase card and a

general reduction in the number of FAR part 16 delivery and task orders awarded between \$3,500 and \$10,000. According to FPDS, there were 12,911 fair opportunity FAR part 16 awards between \$3,500 and \$10,000 in FY 2017. In contrast, there were 6,421 awards in FY 2019; a decrease of almost 50%. This decrease can be attributed to the preference given to the Governmentwide commercial purchase card for procurements under the MPT. While it is unclear whether there will be further decreases in the number of FAR part 16 fair opportunity awards, it is clear that the increased MPT implemented by FAR Case 2018-004 has already reduced the public and Government burden by approximately 50% by shifting procurements from FAR part 16 delivery and task orders to Governmentwide commercial purchase cards.

DoD, GSA, and NASA expect the rule to also reduce burden on the Government and streamline procurements for FAR part 16 orders below the MPT. Contracting officers will not be required to review multiple offers to make award, resulting in time savings for each order awarded.

## **V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

## **VI. Congressional Review Act**

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD, GSA and NASA will send the rule and the "Submission of Federal Rules Under the Congressional Review Act" form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

## **VII. Regulatory Flexibility Act**

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601-612. The FRFA is summarized as follows:

This final rule amends the Federal Acquisition Regulation to implement section 826 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92), which raises the threshold for fair opportunity on certain task and delivery orders to the word-based, "micro-purchase threshold".

The objective of the rule is to increase the threshold for requiring fair opportunity on FAR part 16 orders under multiple-award contracts from \$3,500 to the word-based,

"micro-purchase threshold" for consistency of application and alignment with future adjustments. The legal basis for the rule is section 826 of the NDAA for FY 2020 (Pub. L. 116-92).

There were no significant issues raised in response to the initial regulatory flexibility analysis.

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities; most of the impact will be on the Government. This rule will likely affect small entities that participate in fair opportunity competitions for FAR part 16 task and delivery orders under multiple-award contracts conducted by the Federal Government between \$3,500 and the micro-purchase threshold, which currently is \$10,000. DoD, GSA, and NASA do not expect a significant change in the number of orders awarded to small entities; however, in certain circumstances this rule is expected to reduce the costs associated with developing and submitting a response to task and delivery order competitions for actions up to \$10,000. To assess the impact of the threshold increase, data was obtained from FPDS. For FY 2017 through FY 2019, there was an average of 9,803 FAR part 16 task and delivery orders awarded using fair opportunity between \$3,500 and \$10,000. Of these actions, an average of 5,852 were awarded to 843 unique small entities. As a result of this rule, it is assumed that approximately 843 small entities may experience a reduction in proposal costs on task and delivery orders valued between \$3,500 and \$10,000.

This rule does not impose any reporting, recordkeeping, or other compliance requirements.

There are no alternatives that are consistent with the objectives of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

#### **VIII. Paperwork Reduction Act**

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

#### **List of Subjects in 48 CFR Part 16**

Government procurement.

William F. Clark,  
Director,  
Office of Government-wide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 16 as  
set forth below:

**PART 16—TYPES OF CONTRACTS**

1. The authority citation for 48 CFR part 16  
continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137;  
and 51 U.S.C. 20113.

**16.505 [Amended]**

2. Amend section 16.505 by—

a. Removing from paragraph (b)(1)(i) introductory  
text “\$3,500” and adding “the micro-purchase threshold” in  
its place;

b. Removing from paragraph (b)(2)(i) introductory  
text “delivery-order or task-order exceeding \$3,500” and  
adding “delivery order or task order exceeding the micro-  
purchase threshold” in its place; and

c. Removing from the paragraph (b)(2)(ii)(A)  
subject heading “\$3,500” and adding “*the micro-purchase  
threshold*” in its place.

